

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Dennis B. McGuire,	:	
	:	Case No. 3:99-cv-140
Petitioner,	:	
	:	Chief Judge Susan J. Dlott
v.	:	
	:	Order Granting Motion for
Warden, Chillicothe Correctional	:	Certificate of Appealability
Institute,	:	
	:	
Respondent.	:	

The Court issued an Order (Doc. 138) on March 18, 2013 denying Petitioner's Motion for Relief from Judgment Under Civil Rule 60(b) (Doc. 124). Petitioner filed a Notice of Appeal (Doc. 139) on March 29, 2013 and then a Motion for a Certificate of Appealability (Doc. 141) on April 24, 2013. Petitioner seeks a certificate of appealability as to "the determination that *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), does not justify relief under FED. R. CIV. P. 60(b) on his Second Claim for Relief, a claim that has never been addressed on the merits with sufficient facts about his trial counsel's failings in the mitigation phase." (Doc. 141 at PageID 1059.)

Magistrate Judge Merz has issued a Report and Recommendations (Doc. 143) and a Supplemental Report and Recommendations (Doc. 147) in which he recommends that this Court issue a certificate of appealability. The Warden initially objected to the issuance of a certificate of appealability, but now agrees that, given the recent decision of *Trevino v. Thaler*, 133 S. Ct. 1911 (2013), it is debatable among reasonable jurists whether *Martinez* is applicable in Ohio. (Docs. 144, 148.) There now are no pending objections to the Supplemental Report and Recommendations. The Court concurs with Magistrate Judge Merz's recommendation that a certificate of appealability should issue.

For the foregoing reasons, the Motion for Certificate of Appealability (Doc. 141) hereby is **GRANTED**. The Court **ORDERS** that a certificate of appealability issue on the question of whether *Martinez* justifies granting Petitioner relief from judgment in this case on his Second Claim for Relief regarding the alleged ineffectiveness of his trial counsel.

IT IS SO ORDERED.

S/Susan J. Dlott

Chief Judge Susan J. Dlott
United States District Court

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